

National Transportation Safety Board

§ 821.26

Board may decline to process a proceeding further should a party fail to compensate a witness pursuant to this paragraph.

(c) *Board Members, officers, or employees.* In order to encourage a free flow of information to the Board's accident investigators, the Board disfavors the use of its personnel in enforcement proceedings. Therefore, the provisions of paragraph (a) of this section are not applicable to Board Members, officers, or employees, or the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at hearing shall be addressed to the chief law judge or the assigned law judge, as the case may be, in writing, and shall set forth the need of the moving party for such testimony, and a showing that such testimony is not now, or was not otherwise, reasonably available from other sources. The law judge shall not permit such testimony or documentary evidence to include any opinion testimony, or any account of statements of a respondent, made during the Board's investigation of any accident.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59048, Nov. 15, 1994]

§ 821.21 Official notice.

Where the law judge or the Board intends to take official notice of a material fact not appearing in the evidence in the record, notice shall be given to all parties, who may within 10 days file a petition challenging such fact. Upon the filing of such petition, the party or parties shall be given reasonable opportunity to controvert the fact.

Subpart C—Special Rules Applicable to Proceedings Under Section 602(b) of the Act

§ 821.24 Initiation of proceedings.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of the Administrator's action within 60 days from the time the Administrator's action was served on petitioner. The petition shall contain a short statement of the facts on which petitioner's

case depends and a statement of the requested action, and may be in letter form.

(b) *Filing petition with the Board.* The petition for review shall be filed with the Board and the date of filing shall be determined in the same manner as prescribed by § 821.7(a) for other documents.

(c) *Answer to petition.* The Administrator shall file an answer to the petition for review within 20 days of service upon him by the petitioner of the petition for review. Failure to deny the truth of any allegation or allegations of the petition may be deemed an admission of the truth of the allegation or allegations not answered.

(d) *Stay of proceeding pending request for special issuance (restricted certificate).* The Board lacks authority to review special issuances, or to direct that they be issued. Where a request for special issuance (restricted certificate) has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will hold a petition for review in abeyance pending final action by the Administrator or for 180 days from the date of the Administrator's initial certificate denial, whichever occurs first.

(e) *New evidence.* If petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, the new medical evidence must be served on the Administrator at least 30 days before the hearing. Absent good cause, failure timely to serve any new evidence will result in its exclusion from the record. The Administrator may amend his answer within 10 days from the date the new evidence is served to respond to such new evidence.

[40 FR 30243, July 17, 1975, as amended at 43 FR 60473, Dec. 28, 1978; 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

§ 821.25 Burden of proof.

In proceedings under section 602(b) of the Act, the burden of proof shall be upon the petitioner.

§ 821.26 Motion to dismiss petition for review for lack of standing.

Upon motion by the Administrator within the time limitation for filing an